

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING**

JEFFREY COHEN,

Plaintiff,

v.

**CIVIL ACTION NO. 5:20-CV-152
(BAILEY)**

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Mazzone [Doc. 6]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on August 3, 2020, wherein he recommends that plaintiff's case be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). Further, Magistrate Judge Mazzone recommends that the plaintiff's Motion to Proceed *in forma pauperis* [Doc. 2] should be denied. For the reasons that follow, this Court will adopt the R&R.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes only "general and conclusory objections that do not direct the court to a specific error in the

magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of receipt of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Plaintiff filed a letter [Doc. 9] on August 14, 2020, stating that he does "not have any formal objections." Having stated no objections, plaintiff has waived his right to both *de novo* review and to appeal this Court's Order pursuant to 28 U.S.C. § 636(b)(1). Consequently, the R&R will be reviewed for clear error.


Furthermore, in plaintiff's letter, he requests this Court "to permit the current submission already filed with the Court to stand and not force [him] to incur additional expense to resubmit the same exact paperwork." [Doc. 9 at 2]. A check for \$350 was received by the Clerk's office but was returned to the sender because it was insufficient to file the paperwork. Thus, this Court **DENIES AS MOOT** plaintiff's request to permit the current submission already filed with the Court.

Having reviewed the R&R for clear error, it is the opinion of this Court that the Report and Recommendation [Doc. 6] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that plaintiff's Federal Torts Claim Act Complaint [Doc. 1] be **DISMISSED WITHOUT PREJUDICE**. Further, plaintiff's Motion To Proceed *in forma pauperis* [Doc. 2] is hereby **DENIED**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the defendants and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: August 18, 2020.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE